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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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Subject: Council Decision authorising the opening of negotiations with Japan for the amendment of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters
- Adoption

Statement and declaration presented by the Commission for the minutes of Coreper and of the Council:

Statement on the procedure for negotiations:

"The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations gives the Council power to issue subsequent negotiation directives during the negotiations, which suggests, contrary to the Treaties and Court's jurisprudence, that negotiation directives would have a binding effect on the negotiator. The Commission reserves all its rights in this regard."

Declaration on the legal basis:

"The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

The Commission reserves all its rights in this regard."
